

Waterway and Wetland Handbook
CHAPTER 76
BOAT SHELTERS AND BOATHOUSES

SUBCHAPTER A - BOAT SHELTERS

GUIDANCE PURPOSE AND DISCLAIMER

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A. PURPOSE

Regulate the placement and size

A riparian has the right to place a boat shelter in navigable waters. This right is subordinate to the public right of navigation, and the rights of the state as trustee of navigable waters of Wisconsin. The boat shelter statute and administrative rule are designed to develop rules for the construction, location, size, and placement of boat shelters in navigable waters.

B. MECHANISM

A riparian owner may place a seasonal boat shelter which meets applicable statutory and administrative rule standards without a permit. Should these standards not be met or the boat shelter be permanent, a specific permit under s. 30.12(3)(a)6, Wis. Stats, must be applied for. Alternatively, upon a complaint, the Department investigates the complaint and may hold a hearing under s. 30.14.

C. HISTORY

Prior to the spring of 1988, boat shelters were treated as boathouses and were prohibited below the OHWM by s. 30.121(2).

Act 374, Laws of 1987 was created to authorize permanent boat shelters. The law specified that no permanent boat shelter may be constructed after May 3, 1988 if the property includes a boathouse within 75' of the OHWM or a boathouse over the navigable waters adjacent to the owner's property. The statute also allowed the Department to promulgate rules governing boat shelters.

In 1991, NR 326 was amended to include standards for the construction, location, size and placement of a boat shelter.

D. STANDARDS

1. STATUTORY STANDARDS

- a. s. 30.01(1c) - "Boat shelter" means a structure in navigable waters designed and constructed for the purpose of providing cover for a berth place for watercraft, which may have a roof but may not have walls or sides. Such a structure may include a boat hoist.

A shelter must have a roof or canopy to be treated as a shelter.

The definition differentiates between a shelter with a roof and a hoist (lift) without one.

If a boat lift or hoist has a roof or canopy at any time during the year, it must be treated as a shelter.

- b. s. 30.12(3)(a6) – Permanent shelters require a DNR permit. Riparian status is required. After May 3, 1988, permanent shelters are prohibited on properties where there is a boathouse within 75 ft. of the OHWM or over the water.

2. MUNICIPAL AUTHORITY

s. 30.12(3)(c) - A town, village, city or county may enact ordinances at least as restrictive as the authorizing statute and rules "regulating architectural and aesthetic features" of shelters. They may prohibit them but should justify the prohibition in their ordinance.

3. ADMINISTRATIVE RULES

- a. NR 326, Wis. Adm. Rule - Requirements For Seasonal And Permanent Boat Shelters:
 - 1) May only be placed by a riparian owner in his riparian zone. See NR 326.07 for methods of determining boundaries between zones.
 - 2) May not interfere with public rights or rights of other riparians.
 - 3) Must allow free movement of water underneath and may not cause deposition of sediment on the bed of a waterway.
 - 4) May not violate local ordinances.
 - 5) May not be placed in officially designated scenic waters except for "scenic urban waterways" (s. 30.275).

- 6) Must be connected to uplands by a pier.
 - 7) Limited to a single watercraft. May not exceed 12 x 24 ft. on waters of less than 1000 acres or 14 x 24 ft. on waters of 1000 acres and larger. Existing seasonal shelters are grandfathered but may not be enlarged.
 - 8) May have a roof but may not have walls, sides or drops. Roof must be pitched not less than 1 ft. nor more than 2.5 ft. from peak to eaves.
 - 9) Storage must be located above the eaves.
 - 10) May not be visually intrusive as viewed against the shoreline.
Existing seasonal shelters have 5 years to comply (canopy replacement). "Visually intrusive" means clearly standing out from the shoreline background as viewed from the waterway during leaf-on conditions.
 - 11) May contain only a single sign to identify the property and lighting required for mooring and safety (advertising prohibited).
 - 12) The number of boat shelters per property is limited to one permanent shelter and a total of 2 (including seasonal shelters) for the first 100 feet of shoreline and 1 additional seasonal shelter for each additional 50 feet of frontage. Contiguous lots in common ownership shall be considered one property. Shelters must be grouped at a single location on a property. Existing facilities which do not comply with this provision are grandfathered but may not be expanded.
- b. Additional Requirements For Seasonal Boat Shelters:
- 1) May be placed without a state permit if it complies with the standards above (1-12) and the requirements of this section.
 - 2) Must be completely removed from the waterway between December 1 and April 1 (otherwise considered a permanent shelter requiring a permit and compliance with appropriate standards).
 - 3) May not extend beyond the line of navigation (the greater of boat length, 3 ft. of water depth or deeper if required by draft of craft) or a pierhead line.
- c. Additional Requirements For Permanent Boat Shelters:
- 1) S. 30.12 permit required.
 - 2) Not allowed on most rivers or on lakes or flowages of less than 500 acres. May be permitted on chains of lakes that total 500 acres or more, the Mississippi River, the Wolf river upstream to Fremont and the Fox river below Lake Winnebago. A series of lakes or flowages which have a connection which is commonly navigated by motorized craft and which have a common water level shall be considered a single lake or flowage. Artificial mooring basins and navigation channels and reaches of rivers where water levels are controlled by a dam are considered part of the lake or flowage to which they are connected.
 - 3) May only be permitted adjacent to developed shorelines. Developed shorelines are those where there are at least 5 main buildings within 500 feet of the site (including at least one on the owner's property) which are clearly visible from the waterway.

- 4) Maximum distance from shore (at normal summer low levels): 1) 30 ft. or the line of navigation, whichever is less, on waters of less than 1000 acres; 2) 50 ft. or the line of navigation, whichever is less, on waters of 1000 acres and larger.
- 5) Not allowed if the property also contains a boathouse over the water or within 75 ft. of the waterway (does not apply to shelters constructed prior to May 3, 1988).

4. ADMINISTRATIVE INTERPRETATIONS

A boat shelter must be removed seasonally to a location above the ordinary high-water mark to qualify as a seasonal shelter. This includes flowages that may be drawn down below the shelter site.

Any building on the property within 75 ft. of the OHWM which includes boat storage disqualifies the riparian for a permanent shelter.

E. PERMIT PROCESS

1. APPLICATION

A seasonal boat shelter which is completely removed from the waterway (above the ordinary high-water mark) between December 1 and April 1 annually and also complies with the boat shelter standards NR 326.055(1) and (2) may be placed by a riparian without a permit.

A permit is required for permanent boat shelters that are not removed seasonally. A permit may be granted to a riparian if the construction complies with the requirements in NR 326.055. A permit may not be granted for a permanent boat shelter constructed after May 3, 1988, if the owner's riparian property also contains a boathouse over navigable waters or within 75 feet of the ordinary high-water mark. A permit application must be filled out and submitted for a permanent boat shelter. A boat shelter supplement is available which specifies the information required. When an application is received, it should be carefully reviewed to ensure that all required information has been submitted. An incomplete permit application should be returned to the applicant with instructions on needed information. The following information should be submitted:

- a. Do you think this is necessary? (DMP's comment)
- b.
- c.

2. FIELD INVESTIGATION

The project site is inspected to evaluate the environmental and physical effects of the proposal, to evaluate and verify data supplied by the applicant such as existing riparian structures, upland development, adjacent property lines, project dimensions, and to determine if the proposal meets statutory standards (see discussion under "Design Considerations").

3. NOTICE REQUIREMENTS

A public notice is not required for an application received pursuant to s. 30.12(3)(a)6.

4. FINAL DISPOSITION

The permit should specify exactly what is being authorized under s. 30.12(3)(a)6, including a detailed location description. The permit conditions should include an expiration date for project completion, all boat shelter standards in NR 326.055, and any other conditions that may be necessary to protect the public interest including aesthetics.

Any person objecting to the decision issuing or denying a permit may seek judicial review by serving and filing a petition in accordance with the provisions of ss. 227.15 and 227.16 within 30 days of the decision date.

F. PERMIT MONITORING

G. INVESTIGATION OF COMPLAINTS AND ENFORCEMENT

H. INFORMATIONAL MATERIALS

1. "Boat Shelters - DNR Construction Standards" (7/8/91) - Use it as a checklist for processing permit applications, for answering questions or as a public information handout.
2. "Pier Planner" (4/92)
3. "Make Sure Your Pier Is Legal" - Annual news release includes info. on shelters esp. re. 1/1/96 deadline for replacing "visually conspicuous" canopies on seasonal shelters.

SUBCHAPTER B - BOATHOUSES

A. PURPOSE

While boathouses have been considered aids to navigation, typically their construction has been below the ordinary high-water mark (OHWM). This was for ease of access to the boathouse by a watercraft. In order to preserve and protect the adjacent waterway and minimize impacts on aesthetics these structures are now required to be constructed above the OHWM.

B. MECHANISM

S. 30.121 prohibits the placement or construction of boathouses or fixed houseboats beyond the OHWM of any navigable waterbody. The boathouse must be constructed above the OHWM and may be placed over an enlargement.

C. HISTORY

With the enactment of s. 30.02(1)(b), Wisconsin Statutes by Chapter 455, Laws of 1933, boathouses and other structures were prohibited in navigable waters. This was interpreted to refer to structures that actually interfered with navigation and the incident to navigate.

In 1949, s. 30.02 was amended to create s. 30.02(1)(b) which established a mechanism to allow structures including boathouses by permit. Chapter 101, Laws of 1979 created s. 30.121 which established a procedure for the regulation of houseboats and boathouses and prohibited any new boathouses or fix houseboats from placement below the OHWM. NR 115.03(2)(b)(3) adopted in September, 1970 stated:

Boathouse or similar structures which require a waterfront location shall not be used for habitation nor extend toward the water beyond the ordinary high-waterline. Even with this policy, problems developed because landowners wished to build boathouses over boat slips. Some permits were issued for such construction on the basis that the rule pertained to the original OHWM.

D. STANDARDS

1. STATUTORY STANDARDS

2. RULE STANDARDS

3. MUNICIPAL AUTHORITY

4. ADMINISTRATIVE INTERPRETATIONS

- a. Applicability of boathouse repair limitations (s. 30.121) to boathouses authorized by s. 30.12. The enactment of s. 30.121 specifically limited maintenance of any fixed houseboat or boathouse after December 16, 1979. It does not make any exceptions for boathouses built under a previous 30.12 permit; therefore, these structures are subject to the regulations of s.30.121 and NR 325. (Scott Hausmann memo to District Directors, July 3, 1985.)
- b. Applicability of s. 30.121 to a licensed watercraft. A structure which has a motor and transom, is

licensed as a boat, is navigated twice a year, is used primarily as a commercial business (e.g., souvenir shop), was placed after December 16, 1979, and is secured to the bed of a navigable waterway with the use of spud poles for the entire length of the navigation season is considered a "fixed houseboat" pursuant to s.30.121(1)(b). The structure, although floatable and maneuverable, the primary purpose is not navigation [NR 325.03(8)]. (Scott Hausmann memo to District Directors, March 24, 1987.)

- c. State and local authority to regulate boathouses and houseboats. (Roden memo to District Directors, January 1, 1988.)

Oneida Co. successfully denied permits to rebuild an over water boathouse which was severely damaged by windstorm. I recommend we remain mute on this issue and let counties make their own case as they will. MDD 5/92

- 1) A county can regulate activities below the ordinary high-water mark only if that jurisdiction is set forth in their shoreland zoning ordinance. If a boathouse has been in place prior to December 16, 1979, the specific provisions of s.30.121 control and would preempt any applicable county jurisdiction to prohibit the location and habitations of boathouses or fixed houseboats in navigable waters.
 - 2) Between June 28, 1949 (the effective date of Chapter 235, Laws of 1949, which first allowed permits for structures), and December 16, 1979, permits could be, and were, issued for these structures although not many permits were issued and applications were opposed by the DNR in the 70s. While any boathouse or fixed houseboat built during this time without a permit is unauthorized, s.30.121(3) provides a mechanism to maintain those structures.
- d. Boathouse over waterway enlargements. S.30.121(3)(m) allows for boathouses over certain authorized waterway enlargements. This represents a change from prior statutory and common law by allowing enclosure and private use of some waterway enlargements. We should place appropriate permit conditions on any proposed waterway enlargement applications that may subsequently be enclosed by a boathouse. Natural shoreline aesthetics and the effect of construction on the shoreline and adjacent waterway are among the concerns to be considered when evaluating a permit application to allow wet boathouse construction. These concerns will preclude most wet boathouse construction for multiple boat storage. (Scott Hausmann memo to District Director, December 5, 1988.)

E. PERMIT PROCESS

F. PERMIT MONITORING

G. INVESTIGATION OF COMPLAINTS AND ENFORCEMENT

H. INFORMATIONAL MATERIALS

CORRESPONDENCE/ MEMORANDUM

STATE OF WISCONSIN

DATE: March 31, 1994

FILE REF: 3500

TO: Holders of the Water Regulation Guidebook

FROM: Robert Roden - WZ/6

SUBJECT: New Guidebook Chapter 76, Boat Shelters and Boat Houses

I'm very pleased to provide you with copies of a new chapter of the Water Regulation Guidebook. Attached you will find Chapter 76, Boat Shelters and Boat Houses.

Creation of this chapter was a joint effort by Section, District and Area staff. The assigned team members, John Coke, Dick Koch, Ed Slaminski and Jack Smith, worked very well together and I'd like to thank them for their fine effort.

cc: Ken Johnson - WZ/6
Scott Hausmann - WZ/6
Larry Larson - WZ/6
Dick Knitter - WZ/6

Attachment

Boat Shelter Application Requirements

1. Name, Address, Telephone Number (both home and office).
2. Address of project site. Both tax parcel number and fire number.
3. Copy of deed or tax receipt.
4. Location sketch on how to get to your property.
5. Project plans (shall include both top and side view) Top view must be to scale and show the following:
 - a. Your lot line and those of adjacent properties.
 - b. Existing or proposed piers.
 - c. The existing shoreline.
 - d. Location of structure on your property.
 - e. Any existing boathouses either on shore or in the water.
 - f. The proposed shelter location.
 - g. Depth of water at the waterward end of the shelter.

The side view must include:

- a. Boat shelter with all dimensions.
 - b. Pier showing depth of water at the end.
6. Proposed materials list including color of proposed shelter.
7. Color photos of the construction site and adjacent shoreline to show extent of nearby development as viewed from the water.
8. Type of watercraft to be stored there including length, width, and draft needed.
9. Size of your lake or flowage in acres.

BOATHOUSE MAINTENANCE & REPAIR COST WORKSHEET**FOUNDATION:****Piling:**

No. of pilings = _____ x _____ /pile = \$ _____ : Labor = \$ _____

Floor decking = _____ sq.ft. x _____ /sq.ft. = \$ _____ : Labor = \$ _____

Misc. = _____ \$ _____ : Labor = \$ _____

Level building:

Materials List \$ _____

Labor \$ _____

Total Materials = \$ _____

Total Labor = \$ _____

ROOF:=_____ Sq.ft.**Materials (List)**

Plywood _____ sheets @ _____ /sheet = \$ _____ Labor = \$ _____

Shingles _____ squares @ _____ /square = \$ _____ Labor = \$ _____

Felt Paper _____ rolls @ _____ /rolls = \$ _____ Labor = \$ _____

Nails _____ lbs. @ _____ /lb. = \$ _____ Labor = \$ _____

Flashing and

Drip cap. _____ ft. @ _____ /ft. = \$ _____ Labor = \$ _____

Misc. _____ @ _____ = \$ _____ Labor = \$ _____

Total Materials = \$ _____

Total Labor = \$ _____

SIDING:**Materials (List)**

Siding _____ sq.ft. @ _____ /sq.ft. = \$ _____ : Labor = \$ _____

Nails _____ lbs. @ _____ /lb = \$ _____ : Labor = \$ _____

Trim _____ ft. @ _____ /ft = \$ _____ : Labor = \$ _____

Misc. _____ @ _____ = \$ _____ : Labor = \$ _____

Total Materials = \$ _____

Total Labor = \$ _____

PAINT:_____ sq.ft.**Materials (List)**

Paint _____ gal. @ _____ /gal. = \$ _____ : Labor = \$ _____

Misc. _____ @ _____ = \$ _____ : Labor = \$ _____

Total Materials = \$ _____

Total Labor = \$ _____

INTERIOR:_____ sq.ft.**Materials (List)**

Drywall _____ sheets @ _____ /sheet = \$ _____ : Labor = \$ _____

Wiring _____ @ _____ = \$ _____ : Labor = \$ _____

Fixtures _____ @ _____ = \$ _____ : Labor = \$ _____

Windows _____ @ _____ /Window = \$ _____ : Labor = \$ _____

Doors _____ @ _____ /Door = \$ _____ : Labor = \$ _____

Misc _____ @ _____ = \$ _____ : Labor = \$ _____

Total Materials = \$ _____

Total Labor = \$ _____

ATTACHMENT C

INFORMATION FOR BOATHOUSE REPAIR CERTIFICATION

DNR DOCKET # _____
Section 30.121 Stats.

Owner _____ Contractor/Agent _____

Name _____ Name _____

Address _____ Address _____

Telephone _____ Telephone _____

Boathouse Address (Include Fire or I.D. No.) _____

Waterway _____ County _____

Legal Description: Govt Lot _____, _____ 1/4 _____ 1/4, Section _____,

Township _____ North, Range _____ East.

City/Village/Town of _____

Property Tax Number (for boathouse location) _____

List prior owners after 12/16/79 _____

Signature of Applicant

Date

Attach the following:

1. Statement signed by the assessor giving the equalized assessed value of the boathouse or a copy of the official assessment role which gives this information. If the boathouse is not assessed, or if it cannot be separately distinguished from the general property assessment, attach a statement from the assessor stating this. You may then submit an appraisal of the current fair market value certified by a competent appraiser using standard real estate appraisal techniques.
2. A map showing the location of the boathouse and directions to the site. Include the fire number.
3. Photographs or plans which clearly show the appearance of the boathouse, foundation, structural framework, siding and roofing.
4. A statement of the needed repairs and maintenance for all necessary work and a cost estimate for the work.
5. A copy of the deed with any deed attachment and tax statement which states the full legal description.
6. A listing of any prior maintenance work and date -- back to 1979.

The Department will respond by letter as soon as possible. Any work done to a boathouse over water without Department approval will result in prosecution of the owner and contractor with the possibility of the court ordering complete removal at the owner's expense.

CORRESPONDENCE/ MEMORANDUM**STATE OF WISCONSIN**

DATE: April 29, 1994 FILE REF: Program Guidance

TO: District Directors (Water Regulation Supervisors)

Distribution: Water Regulation Staff
Bureau of Legal Services
Department of Justice - Environmental Unit
County, City and Village Zoning Administrators

Insertion: Chapter 76, Water Regulation Handbook
Chapter 4, Floodplain/Shoreland Management Guidebook

FROM: Scott Hausmann - WZ/6

SUBJECT: Oneida County v. Converse
Wisconsin Supreme Court decision, filed December 8, 1993

A copy of this decision was distributed to Water Regulation staff on December 9, 1993. I am responding to a number of questions that we have been asked since then about the implications of this Supreme Court decision on water regulation and zoning programs.

Facts of the Case

Since 1945, the Converse family owned a two-story wet boathouse (one which extends beyond the ordinary high water mark) on Lake Tomahawk in Oneida County. The boathouse was destroyed by a tornado on April 27, 1984. It was at that time a nonconforming use under Section 9.51(D) of the Oneida County Zoning and Shorelands Protection Ordinance, which states that no boathouse may extend beyond the ordinary high water mark. The boathouse was also subject to repair and maintenance restrictions under Section 30.121, Wis. Stats. Section 30.121 states that "after 12/16/79, no boathouse or fixed houseboat may be constructed beyond the ordinary high water mark of a navigable waterway." This section also limits repair and maintenance of boathouses or fixed houseboats in existence prior to 12/16/79 to 50% of their equalized assessed value.

The Converse family's application for a permit to rebuild the boathouse was denied by the Oneida County Zoning Administrator. Upon appeal, the Zoning Administrator's decision was upheld by the County Board of Adjustment. The Converse family rebuilt the boathouse in Spring, 1985, and the County filed suit in circuit court, claiming violation of Section 9.51(D) of its ordinance because repairs would exceed 50% of the boathouse value. As a defense, the Converse family relied on NR 325.065, Wis. Admin. Code, which exempts boathouses or fixed houseboats from the 50% repair and maintenance limitation if they were damaged by violent wind, vandalism, or fire.

Sequence of Court Decisions

Oneida County Circuit Court ruled in favor of the county. The Converse family was fined \$11,000 and ordered to remove the boathouse.

The Court of Appeals reversed in November, 1992, based on the conflict between county and state standards.

The Wisconsin Supreme Court reversed the Court of Appeals decision and reinstated the Circuit Court judgment.

It found that NR 325.065 was invalid because it was inconsistent with Section 30.121(3), Wis. Stats. The Converse was therefore bound by Oneida County ordinance provisions. The Converse boathouse has since been removed.

Implications for Local Zoning and DNR Water Regulation Programs

Zoning. Local zoning ordinance limitations on repairs, alterations, or additions to nonconforming uses and structures (the "50% Rule" or some other policy) continue to apply to nonconforming boathouses as well as other nonconforming structures.

Water Regulation. The exemption from the 50% repair and maintenance provisions in NR 325.065 on boathouses destroyed by violent wind, vandalism or fire is invalid as of December 8, 1993, the Supreme Court decision filing date. The following describes the implications for a few specific situations.

1. Wet boathouses and fixed houseboats destroyed by violent wind, vandalism or fire where DNR approval was obtained and the structures were rebuilt prior to December 8, 1993. These rebuilt boathouses/structures are not affected by the Converse decision. The rebuilt wet boathouses/structures are subject to Section 30.121, Wis. Stats. limitations, and therefore once they have been repaired or maintained in excess of 50% of their equalized assessed value, they may not be further repaired. The 50% cumulative clock starts at the time the structure was rebuilt. When the structure falls into a major state of disrepair it must be ordered removed.
2. Wet boathouses and fixed houseboats destroyed by violent wind, vandalism or fire, but that were NOT rebuilt prior to December 8, 1993. Regardless of whether or not DNR approval for rebuilding had already been obtained, if the structure was not rebuilt prior to December 8, 1993, it may not be reconstructed. If DNR staff are aware of any pending reconstruction of previously exempt structures, they should immediately advise the owners of the change in status of their structures.
3. Wet boathouses destroyed by violent wind, vandalism or fire after December 8, 1993. Because repair or maintenance would exceed 50% of the structures' equalized assessed value, they may not be rebuilt.

Drafted by: Susan Jones - WZ/6

Reviewed by: Ken Johnson - WZ/6
Michael Cain - LC/5
Linda Meyer - LC/5

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